



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

December 3, 2007

Howard Levine, Registered Agent
Rainbro, Inc.
Suite 1000, Volunteer Bulding
Chattanooga, Tennessee 37402

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 5237

Subject: DIRECTOR'S ORDER NO. 07-099
RAINBRO, INC.
HAMILTON COUNTY, TENNESSEE

FILE

Dear Mr. Levine:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

It is the Department's position that corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Vojin Janjic, Manager
Enforcement and Compliance Section

VMJ:BPB

cc: DWPC – EFO-Chattanooga
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
RAINBRO, INC.)	CASE NO. 07-099
)	
)	
RESPONDENT)	

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

Rainbro, Inc., (hereinafter the "Respondent") is the owner and operator of a pressure-based sewage pump system which serves residents of the Windstone subdivision in Ooltewah, in Hamilton county, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent through its Registered Agent, Howard Levine, at Suite 1000, Volunteer Building, Chattanooga, Tennessee, 37402.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 et seq., the Water Quality Control Act, (hereinafter the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and, as herein described, has violated the Act.

V.

T.C.A. §69-3-108(c) requires that a person obtain a permit from the department to operate a sewerage system.

FACTS

VI.

On November 22, 2005, division personnel from the Chattanooga Environmental Field Office (CH-EFO) conducted an inspection of the site following a complaint that raw sewage was being discharged into a wet weather conveyance that drains into a nearby pond. Upon investigation, division personnel noted there was evidence that an overflow had occurred recently and that a cleanup had not been implemented. It was observed that sewage had discharged from the wet weather conveyance into the receiving pond located downstream of the pump station. The pump station and wet weather conveyance are located in Tennessee, but the receiving pond is located in Georgia.

VII.

On November 30, 2005, division personnel issued the Respondent a Notice of Violation (NOV) for the illicit discharge of raw sewage and for failing to report the overflow to the division as required by the permit. The Respondent was also cited for failing to place and maintain signage at each bypass/overflow point in the collection system. The NOV required the Respondent to employ proper cleanup methods at the overflow site immediately, collect and test water samples from the receiving pond for *Escherichia coli* (E. coli), provide reports that verify flow rates, and erect proper signage at the overflow point based upon documentation provided by the homeowners' association that there had been numerous overflows at that location.

VIII.

The Respondent sent correspondence to the division dated December 14, 2005, stating the site was cleaned up by raking and applying lime, and that this form of cleanup would be standard for each overflow point. The Respondent stated signage at the pump station was not necessary because the State Operating Permit (SOP) only requires signage to be posted when an overflow event occurs five times or more within a one year period of time. According to the Respondent's records, this was not the case at this pump station, and the Respondent requested the division to not enforce the posting of a sign. The Respondent included the water sample results from the receiving pond that was tested on December 5, 2005. The sample measured a fecal coliform level of 1,200/100ml.

IX.

The Respondent sent correspondence to the division dated December 14, 2005, to report a sewage overflow at the pump station that occurred on November 11, 2005. The Respondent stated that due to a tripped breaker, the overflow continued for approximately 12–14 hours, which allowed an estimated overflow of 34,000 gallons of raw sewage.

X.

On January 24, 2006, the division sent correspondence to the Respondent regarding the Respondent's two letters, each dated December 14, 2005. Division personnel agreed with the Respondent's proposed modification of the operating

procedures to the SOP which included the application of lime to the affected area following a sewage overflow.

The division also informed the Respondent that the sampling had been requested for E. coli, not fecal coliform, and that the fecal coliform test performed after the overflow was no longer the standard used for the pathogen criteria. When fecal coliform was the standard, the criteria was 200 colonies/100ml of water for a multiple sample test and 1000 colonies/100ml for a single sample test. The fact that the Respondent performed this test several weeks after the overflow and that the pond water still registered 1200 colonies/100ml water was of significant concern to the division. Since the fecal coliform bacteria that was tested have a short viable life expectancy outside of a warm-blooded animal, the division believed either the pump station was continuing to overflow or that a sewer line was leaking, allowing waste water to reach the pond.

The new pathogen criteria standard calls for E. coli bacteriological testing with a standard of 126 colonies/100ml of water for a multiple sample test and 487 colonies/100ml for pond, lakes, and reservoirs. The division required the Respondent to collect a water sample from the receiving pond and have it analyzed for E. coli bacteria on a weekly basis, starting February 1, 2006. The Respondent was to report results to the CH-EFO on the last Friday of each month and continue until the water quality criteria was met for three consecutive months.

The division requested the Respondent to provide reports that verify flow rates of the pump station or provide a rationale that would establish the adequacy of the pump station in handling maximum instantaneous flows.

The division noted the homeowners' association provided documentation that reflected numerous overflows of this pump station. The division informed the

Respondent that due to the excessive number of overflows and unusually high fecal coliform test results from the receiving pond, the signage would be required according to the permit and must be erected at the pump station no later than February 17, 2006.

XI.

The Respondent sent correspondence to the division dated October 4, 2006, to report a sewage overflow at the pump station that occurred on September 27, 2006. The Respondent stated that a tripped electrical breaker caused the overflow. The Respondent planned to install some circuitry to the control panel that would help determine whether the problem was coming from a float or the bubbler. The affected area was cleaned and lime applied. The Respondent believed the overflow occurred for approximately two hours, which would have discharged approximately 5,400 gallons of raw sewage. The Respondent stated he had installed equipment to notify him in the event of an overflow, but it was not fully programmed at the time of this overflow. The Respondent included the water sample results from the receiving pond was tested on September 29, 2006. The sample measured a fecal coliform level of 4,800/100ml.

XII.

On October 13, 2006, the Respondent sent the division correspondence stating that a water sample collected on October 9, 2006, measured a fecal coliform level of 12/100ml.

XIII.

The Respondent sent correspondence to the division dated January 10, 2007, to report a sewage overflow at the pump station that occurred on December 31, 2006. The Respondent stated the overflow occurred for almost six hours and discharged an estimated 11,000 gallons of raw sewage.

The Respondent stated the overflow occurred due to a small hole in the plastic tubing that the bubbler system uses to calculate the wet well level. Due to the hole, there was a loss of pressure which gave the computer a false reading of the well being empty. The Respondent stated he received an alert of the pump station experiencing wet well issues from the unit's monitoring system, but disregarded the notification thinking there was an error in the message. The Respondent forwarded to the division a copy of a Daily Runtime Summary report of the pump station from December 9, 2006, through January 10, 2007, as well as a dispatch alarm log dated December 21, 2006, which started at 1:59 a.m. and ended at 1:01 p.m., for review.

The Respondent had the affected area of the site cleaned and lime applied on January 2, 2007, and stated he would monitor the fecal coliform level of the pond and report back to the division if there were any unexpected readings.

XIV.

The Respondent sent correspondence to the division dated March 15, 2007, to report a sewage overflow at the pump station that occurred on March 11, 2007. The Respondent stated the overflow occurred due to a power outage which disabled the pump station, but not the grinder pumps at private residences. Roto-Rooter and the City of Chattanooga were contacted and each dispatched a pump truck to the site to remove the

contents of the wet well while the power was out. The Respondent estimated the overflow of raw sewage to be approximately 770 gallons. The Respondent cleaned the affected area and applied lime on March 13, 2007, and stated that none of the raw sewage made its way into the receiving pond.

XV.

On March 23, 2007, division personnel investigated a complaint reported by a resident who stated a sewage overflow was occurring at the time of the call. While investigating the complaint, division personnel noted raw sewage was overflowing out of the pump station into the wet weather conveyance, and had made its way into the receiving pond. Division personnel then reported the overflow occurrence to the Respondent who contacted maintenance personnel to investigate the situation.

XVI.

The Respondent sent correspondence to the division dated March 29, 2007, to report a sewage overflow at the pump station that occurred on March 23, 2007. The Respondent stated the overflow had been caused by a power failure at the pump station. According to the Respondent, the power failure was the result of a control panel shutdown accidentally caused by an outside vendor that had been hired to install a new battery. The vendor did not report the problem to on-site personnel, who disregarded an overflow alarm sent to them by the system because they assumed it was an error caused by the maintenance activities.

The Respondent estimated the overflow continued for approximately five hours, discharging an estimated 7,049 gallons of raw sewage. The Respondent cleaned the affected area and applied lime on March 24, 2007.

XVII.

On August 9, 2007, a Show Cause meeting was held at the CH-EFO with the Respondent, the Respondent's consultant, and division personnel. Division personnel requested the Respondent to submit a Corrective Action Plan (CAP) that would address the prevention of any more overflows in the sewerage system. The Respondent's consultant presented engineering plans that reflected the pump station was properly sized. The Respondent submitted a copy of the Temporary Injunction Order, Case No. 07C876, from the Circuit Court of Hamilton County. The Respondent stated he was unaware of the requirement to report sewage overflows in accordance with the permit and that power failures are the cause of repeated overflows at this pump station.

XVIII.

On October 12, 2007, division personnel conducted a complaint investigation at a different location at the site. After conducting the investigation, division personnel checked on the pump station and found it functioning properly at that time.

XIX.

During the course of investigating this matter, the Division incurred damages in the amount of SIX HUNDRED FOURTEEN DOLLARS AND FORTY-TWO CENTS (\$614.42).

VIOLATIONS

XX.

By failing to comply with the terms and conditions of the permit, the Respondent has violated T.C.A. Section §69-3-114(b), which states:

T.C.A. §69-3-114(b):

- (b) It is unlawful for any person to act in a manner or degree that is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or to fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

ORDER AND ASSESSMENT

XXI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENTS to the Respondent:

1. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, submit to the division for review and approval, a sewer overflow response plan (SORP). The SORP shall include procedures for minimizing health impacts and shall include measures to be taken when overflows discharge on local streets, public areas, or residential properties. The SORP shall specifically address the methods and procedures to be utilized in the cleanup of sewer overflow points. The SORP shall also include appropriate measures for the notification of affected property owners, including stream users if applicable, and shall include notification of the news media

when necessary to protect public health. The procedures shall also include provisions for posting warning signs at places where the general public could gain access to polluted waters. Further, posted signs shall remain in place until monitoring reveals that the affected water body has returned to normal background conditions. In the event that the division requires the Respondent to modify/revise the SORP, the Respondent shall submit the modified/revised SORP to the division within 30 DAYS of the date of notification. The SORP shall be submitted to the Water Pollution Control manager at the CH-EFO at Suite 550, State Office Building, 540 McCallie Avenue, Chattanooga, Tennessee 37402.

2. The Respondent shall, within THIRTY (30) DAYS of written approval by the division, fully implement the SORP. The Respondent shall notify the division, in writing, once the SORP has been fully implemented. The notification shall be submitted to the CH-EFO at the address provided in Item 1.
3. The Respondent shall, within THIRTY (30) DAYS of receipt of this Order, submit to the division, for review and approval, a plan detailing necessary repairs, additions, maintenance, and operational procedures that will be implemented in order to prevent additional overflows of untreated sewage from the collection system. This plan should be submitted to the Water Pollution Control manager in the CH-EFO at the address provided in Item 1. The Respondent must correct any deficiencies the division finds upon review of the plan and the corrected plan should be resubmitted to the division within 30 days of notification of the deficiencies.
4. The Respondent shall, within THIRTY (30) DAYS of approval, begin implementation of the approved plan.

5. The Respondent shall complete all requirements of the order and be in full compliance with the Act no later than April 30, 2008. Notification of completion shall be submitted to the manager of the Division of Water Pollution Control in the CH-EFO.
6. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00), payable as follows:
 - (a) The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division SEVEN THOUSAND DOLLARS (\$7,000.00).
 - (b) In the event the Respondent fails to comply with Part XXI, item 1 above, the Respondent shall pay FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100.00) to the division, to be paid within 30 DAYS of default.
 - (c) In the event the Respondent fails to comply with Part XXI, item 2 above, the Respondent shall pay FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100.00) to the division, to be paid within 30 DAYS of default.
 - (d) In the event the Respondent fails to comply with Part XXI, item 3 above, the Respondent shall pay FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100.00) to the division, to be paid within 30 DAYS of default.
 - (e) In the event the Respondent fails to comply with Part XXI, item 4 above, the Respondent shall pay FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100.00) to the division, to be paid within 30 DAYS of default.

(f) In the event the Respondent fails to comply with Part XXI, item 5 above, the Respondent shall pay FOUR THOUSAND ONE HUNDRED DOLLARS (\$4,100.00) to the division, to be paid within 30 DAYS of default.

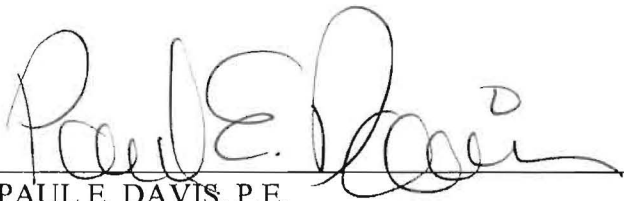
7. The Respondent is assessed DAMAGES in the amount of SIX HUNDRED FOURTEEN DOLLARS AND FORTY-TWO CENTS (\$614.42) which shall be paid to the division within 30 DAYS from the receipt of this Order.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this _____ day of _____ 2007.


PAUL E. DAVIS, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within THIRTY (30) DAYS of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548". If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's

Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.